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21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA
23 SAN FRANCISCO DIVISION

24 ORACLE AMERICA, INC.
Plaintiff,
25 v.
26 GOOGLE INC.
Defendant.

Case No. CV 10-03561 WHA
**[PROPOSED] ORDER GRANTING
ORACLE'S MOTION IN LIMINE #4
REGARDING GOOGLE'S DAMAGES
EXPERT, DR. LEONARD**

27 Dept.: Courtroom 8, 19th Floor
28 Judge: Honorable William H. Alsup

[PROPOSED] ORDER GRANTING ORACLE'S
MOTION IN LIMINE #4 REGARDING GOOGLE'S
DAMAGES EXPERT, DR. LEONARD

1 This Court has read and considered Plaintiff Oracle America, Inc.'s Motion in Limine #4
2 Regarding Google's Damages Expert, Dr. Leonard, and any Opposition thereto and Reply in
3 support thereof, and any and all additional supporting papers.

4 Based thereon [and on statements made by counsel at the hearing on the Motion], IT IS
5 HEREBY ORDERED THAT Oracle's Motion is GRANTED.

6 Portions of Dr. Leonard's analysis, opinions, and conclusions are stricken and his
7 testimony on those matters excluded under Federal Rules of Evidence 402, 403, 702, 703, and
8 *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and its progeny because they
9 are legally irrelevant, erroneous, unreliable, prejudicial, based on flawed methodology, and (in
10 some instances) rely on information and estimates of information that Google refused to produce
11 in discovery.

12 Specifically, Dr. Leonard’s analysis, opinions, conclusions, and testimony regarding the
13 causal nexus and apportionment elements of infringer’s profits (disgorgement) are excluded in
14 their entirety. Dr. Leonard’s causal nexus and “bottom up” apportionment opinions as well as
15 portions of his expense deductions opinions are based on counterfactual non-infringing
16 alternatives that are legally irrelevant and prejudicial. Dr. Leonard’s “bottom up” apportionment
17 analyses are independently excluded as unreliable, prejudicial, and premised on information and
18 estimates of information that Google refused to produce in discovery.

19 Dr. Leonard's "top down" apportionment approaches (the line-per-line valuations) are
20 excluded as legally irrelevant, unreliable, and based on technical information for which Dr.
21 Leonard is not qualified to opine.

Finally, Dr. Leonard's deduction for traffic acquisition costs ("TAC") is excluded is irrelevant, erroneous, and unreliable.

24 IT IS SO ORDERED.

THE HONORABLE WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE